No. 6644

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WILLIAM L. HUGHSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLEE.

GEO. J. HATFIELD,
United States Attorney,
ESTHER B. PHILLIPS,
Assistant United States Attorney,
Attorneys for Appellee.

Parker Printing Company, 545 Sansome Street, San Francisco

Index to Brief

Table of Authorities

No. 6644

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

WILLIAM L. HUGHSON,
Appellant,

vs.

UNITED STATES OF AMERICA,
Appellee.

BRIEF FOR APPELLEE.

STATEMENT OF THE CASE.

The United States brought suit to recover judgment upon four bonds given by Carl Hader and William L. Hughson. Hughson appeared. Hader did not. A judgment was rendered against Hughson by the District Court for the Northern District of California, from which he took this appeal. There was a separate cause of action for each bond, the pleadings of all causes being similar in form. The answer to each cause of action was the same. We shall analyze the pleadings upon the first cause of action and shall

then consider the points urged by appellant as grounds for reversal of the judgment.

The issues raised by the pleadings were as follows:

Complaint (Rec. pp. 1-36)	*Answer of Defendant Hughson* (Rec. pp. 37-48)
Paragraph	
I — Sovereign capacity of Plaintiff.	I—Admitted.
II — Residence of defendants Hader and Hughson.	II—Admitted.
III—A suit founded on a contract, authorized by the Attorney General etc.	III—Admitted.
IV—On March 15, 1921, defendant Hader filed income tax return for 1920 disclosing tax liability for 1920 in the sum of $136.25, which was paid.	IV—Admitted.
V — Commissioner determined correct liability to be $1812.03 and made assessment in May, 1925, Special Assessment List, payment being demanded on May 15, 1925.	V—Admitted.
VI—(a) Defendant Hader filed appeal with Board of Tax Appeals and thereafter and on June 8, 1925, executed claim for abatement.	VI—(a) Admitted.
(b) Hader executed bond as principal and Hughson executed it as surety. Copy attached to complaint.	(b) Admitted; but denies that the bond became operative.

Complaint (Rec. pp. 1-36)	*Answer of Defendant Hughson* (Rec. pp. 37-48)
	(c) Denied.
(c) Bond was executed and delivered to the Collector "in consideration of the Collector refraining from enforcing immediate payment of the tax assessed as aforesaid."	
VII—On November 17, 1925, Board of Tax Appeals dismissed appeal for lack of jurisdiction. The Commissioner rejected Hader's claim in abatement on December 9, 1927, and so notified him. On July 14, 1928, the Collector advised defendant Hughson that Hader had failed to pay tax liability secured by bond and demanded payment from defendant Hughson of the amount due. Other demands made upon both defendants, failure to pay any part.	VII—All allegations of fact admitted but answer denies that there is any liability on the bond.

Thus the denials in the answer make one issue of fact, viz, whether the Collector, because of the bond, withheld collection and, secondly, an issue of law whether the bond was operative so as to impose a liability upon the defendant Hughson.

The answer also sets up affirmative defenses (1) that the cause of action is barred by Section 791, Title 28 of the United States Code; (2) that the bond was

never filed with nor accepted by the Collector as provided by law; (3) that the claim in abatement was not filed in time, was neither passed on nor approved by the Collector; and (4) lastly, that a compromise of the four claims for $100.00 was offered by the defendant Hughson to the Commissioner and was accepted by him.

Upon the issues of fact the trial court found that the bonds were delivered to the Collector of Internal Revenue and were duly accepted by him and by his superior officers, and that the Collector relied on the bonds and withheld collection (Finding II, Rec. p. 50). He further found that a compromise was offered by Mr. Hughson but was rejected by the Commissioner (Finding II, Rec. p. 51). The finding upon the compromise involves a mixed question of law and fact.

The other legal issues in the case are whether the bonds in suit became operative so as to impose liability on Mr. Hughson; whether the statute of limitations had run upon the right of action, and whether the rate of interest was properly computed in the judgment.

ARGUMENT.

I.

THE BONDS IN SUIT OPERATED TO IMPOSE LIABILITY UPON THE APPELLANT.

We have quoted in the appendix to this brief the bond which was sued upon in the first cause of action

and which was identical in form with the bonds sued upon in the second, third and fourth causes, saving as to the amounts. The same attack is made upon each bond. It is argued that there was no consideration; that the bonds were not properly accepted or approved by the Collector; and, lastly, that liability under the bonds did not attach because the claims in abatement of the taxes and the bonds were not filed within ten days of assessment of the deficiency as provided by statute and regulations. We shall answer these points in the order given above:

(a) The bonds were given for good consideration.

The United States offered in evidence a properly certified copy of the Assessment Certificate made by Commissioner D. H. Blair on May 14, 1925, wherein he assessed the defendant Hader with additional taxes as follows: for 1920 taxes $1,812.03; for 1921 taxes $1,323.11; for 1922 taxes $947.71, and for 1923 taxes $670.80 (see Pltf's Ex. 1, Rec. pp. 67 and 70). This assessment was received by the Collector in May, 1925 (Rec. p. 59), and was his authority for proceeding to collect the tax (see Sec. 102 of Title 26 U. S. Code Ann.).

On June 25, 1925, the taxpayer, Hader, filed with the Collector claims for abatement of the taxes (alleged in Paragraph VI and admitted in the answer). The mere filing of these claims did not stop the Collector from efforts to collect the taxes: there is no provision of the law which gives abatement claims such efficacy, and the collection might still proceed. The Collector,

Mr. McLaughlin, testified that Hader at the time of filing his claims in abatement filed bonds which were not acceptable in form (Tr. p. 59). These were returned to him, and Hader later filed the bonds in suit. This was in August, 1925 (Rec. p. 60). Their execution by Hader and Appellant Hughson has not been denied. Mr. McLaughlin testified that after these bonds were given, he took no further steps to collect the taxes until March, 1928 (Rec. p. 60). This was after the claims in abatement were rejected (see Paragraph VII). His reason for not proceeding with the collection of the tax was because he "had bonds which covered the claims, and the claims were pending, and until the claims were rejected there should be no action" (Rec. p. 60).

The bond recites that the exaction of payment at the time will result in great hardship upon the taxpayer and further refers to an extension of time for payment of the deficiency upon the giving of the bond. There was thus a promise upon the one side to pay the deficiency in tax, and upon the other side an extension of time which was coupled with forbearance of collection. No effort was made to collect the tax until after the Commissioner had ruled on the claims in abatement. The foregoing by one party of his right to resort to a remedy to which he is entitled has always been held to be a good consideration. It is hardly necessary to cite authority. See

Williston on Contracts, Vol. II, Sec. 135.

The fact that the promise was made by Mr. Hughson for the benefit of Hader, and by the Collector for the benefit of the United States, makes no difference in the rule. We direct also attention to the fact that Mr. Hughson's liability on the bond is not conditioned on Hader's liability to pay. It is direct. As far as the obligee of the bond is concerned, Mr. Hughson was equally liable with Hader.

Appellant's chief ground for urging that there was no consideration for Hughson's execution of the bonds is that the bonds were executed under the assumption that appeals to the Board of Tax Appeals had been perfected by Hader. (Appellant's Brief, p. 6.) Appellant points out that although Hader had in fact given notice of an appeal to the Board of Tax Appeals, his appeal was defective and the appeal was dismissed by the Board of Tax Appeals because it was taken prematurely (Vol. III, Board of Tax Appeals, p. 367). Appellant argues that his liability could not attach unless there was a valid appeal to the Board.

It seems to us that this argument almost answers itself. It is not disputed that an appeal had been taken and that the recital in the bond as to the fact of an appeal is correct. It is true that the appeal was not successful. But can it be argued with any degree of force that the consideration for the bond was that the defendant Hader prosecute his appeal successfully? If every surety could contend that his liability attached only in the event of a successful appeal, there would be no object in requiring bonds. It is in the

event of an unsuccessful appeal that the Collector and the Commissioner want the United States protected in its taxes. To the possible argument that there is a difference between an appeal which is successful in giving the appellate tribunal jurisdiction, and the appeal which is successful upon a trial of the merits before that tribunal, we would say that as far as purpose of a bond for payment of taxes is given, there is no difference at all. The object of the bond is to secure the United States in its taxes while its collector has foreborne to collect pending the appeal, whatever measure of success the appeal may have.

Besides, these bonds were of dual character. They purport to guarantee payment to the United States of the deficiency taxes assessed by the Commissioner of Internal Revenue, as well as serving for a bond for extension of time for payment. This is apparent upon examination of the face of the bond. Take the first bond as an example. The introductory paragraph states the names of the parties and recites that they are bound to the United States in the sum of $3,624.08. The second paragraph recites that additional income taxes from Mr. Hader are due, amounting to $1,812.03. The next paragraph recites that payment at this time will result in hardship. The fourth paragraph recites that under the statute an extension of time not to exceed eighteen months may be granted by the Commissioner, upon the giving of bond. Next follows a reference to the amount. Next follows the paragraph respecting the appeal. Then follows the conclusion:

> "Now, therefore, the condition of the foregoing option is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1920 as may be found due by the Commissioner, plus all penalties and interest, *in accordance with the terms of the extension granted,* and shall otherwise well and truly perform and observe all the duties of the law and the regulations, then it is to be void, otherwise to remain in full force and effect."

Thus it appears that both of the defendants bound themselves to pay the deficiency in tax if it were not paid on or before June 10, 1926. The obligation to pay was absolute, save for the extensions referred to in the bond, viz.: an extension of time under the statute (paragraph 4) and until the termination of an appeal to the Board of Tax Appeals.

In the case of

> *Miami Valley Fruit Co. v. U. S.,* 45 Fed. (2d) 303 (certiorari denied 283 U. S. 841),

decided by the Circuit Court of Appeals for the Fifth Circuit November 20, 1930, the suit was on a bond in form similar to the bonds in the present suit, except that no reference was made to an appeal to the Board of Tax Appeals. The bond merely referred to the extension of time for payment, a paragraph exactly like the present bonds. As to the consideration the Court said:

> "The plea of total want of consideration for the bond is also bad. Irrespective of the rules of

law concerning sealed instruments (no seal appears on this bond in the record, though its body recites one), the real consideration for giving it and for the sureties signing it was the extension of time for a year and the removal of the threat of distraint."

In the case at bar, there is no question that the collector, to whom this bond was offered and by whom it was accepted, withheld any further efforts to collect the tax, relying upon the bond. He so testified and there is no evidence to the contrary. The appellant Hughson, after making a representation in this bond as to the taking of an appeal, and after getting this extension of time, upon which representation the collector was expected to rely and did rely, is now seeking to show the representation in the bond was incorrect and that the extension of time was of no value. We think that he is estopped.

Appellant's brief relies on the case of

Clarke v. Mohr, 125 Cal. 540.

It is not in point. There were two bonds involved in that case. One of them was a bond purporting to be given upon an appeal from a motion denying a new trial. In fact it was given before the order denying the new trial was made. The other was a bond upon an appeal from a judgment. The first bond was held invalid. So far as the report of the case shows, a motion was made by the respondent to dismiss the appeal

because of the insufficiency of the bond, and there was no other consideration or matter involved.

Lastly, the case of

Robert's Sash & Door Co. v. U. S., 38 Fed. (2d) 716; affirmed 282 U. S. 812,

is directly to the contrary of appellant's contention. In that case the bond recited that the principal had filed or was about to file a claim in abatement. No claim was ever filed. It was argued that for this reason liability under the bond never attached. It was held immaterial whether or not such claim was filed, that the consideration for the bond was the fact that the tax was assessed and collection postponed because of the filing of the bond. This is exactly the situation in the case at bar.

(b) The bonds were approved and accepted by the Collector.

It is argued that the bonds were not approved by the Collector (Appellant's Brief p. 10). The court found otherwise (Finding II, Rec. p. 50) and his finding is amply sustained by Mr. McLaughlin's testimony (Rec. pp. 60-61). The suggestion that the Collector in order to make the bond effective must *write* his approval on the bond (instead of approving and accepting it by his actions) and that he must give formal notice of the approval to some one (to whom appellant does not say) may be dismissed as fanciful requirements imposed by this appellant, but not required by

the Collector's principal. Besides, the suit by the United States is a sufficient ratification of the act of its servant Collector.

Miami Valley Fruit Co. v. U. S., 45 Fed. (2d) at 306.

(c) **Delay in filing claims in abatement and bonds does not impair the validity of the bonds.**

It is argued that under the statute and the regulations, claims in abatement, together with bond, must be filed within ten days after demand for payment of deficiency taxes; that it was more than ten days after such demand that Hader filed his claim in abatement and more than ten days after filing the claims that the bond was given, and hence the bond was invalid (Appellant's Brief pp. 11-13).

We do not wish to dignify this argument by extended reply. There seems no good reason for denying to the Collector the power to extend time to taxpayers beyond the period fixed by law for filing tax returns, claims in abatement, and the like. As to the filing of bonds, the question is a practical one. A Collector who has made a demand for payment and has not succeeded in making a collection, ought to give a warm welcome to a bond with responsible surety whenever it is filed. Can any one imagine such a collector, a faithful servant of the United States, rejecting such a bond because it is tardy, and preferring to take his

chances upon a distraint proceeding, which he has no reason to think would be successful? Whatever can be said upon this, does it lie in the mouth of the taxpayer and his surety to complain of extensions of time given him and of favors and leniency in enforcing the law?

II.

THE SUIT WAS NOT BARRED BY THE STATUTE OF LIMITATIONS.

The bonds were executed and filed on August 25, 1925 (Rec. p. 60). The suit was filed on January 7, 1931 (Rec. p. 36).

It is argued that the cause of action accrued upon November 17, 1925, when the Board of Tax Appeals dismissed Hader's appeal, and that the governing statute of limitations is Section 791 of Title 28 of the United States Code Annotated, which provides a five-year period for suit or prosecution for a penalty, forfeiture, pecuniary or otherwise, running from the date when the cause of action accrued. This argument overlooks the fact that the bond fixes payment of the deficiency taxes by the principal on or before June 10, 1926, as its condition. If the United States could not have sued appellant Hughson prior to June 10, 1926, we are at a loss to see why the five year statute could be held to have run by January 7, 1931. Even on appellant's own theory the suit was filed in time.

It is sufficient, however, to say that Section 791 does not apply to a suit upon a bond and that there is no statute of limitations applicable to a bond given to stay the collection of taxes.

United States v. John Barth Co., 279 U. S. 370; 73 L. Ed. 743.

Congress has not provided a statute since the *Barth* case was decided, and that case is still controlling authority.

Appellant suggests that this suit is not based upon any sovereign rights of the United States. If this suit does not relate to sovereignty, we are curious to know what are the suits which come within the field of sovereignty.

III.

THE LIABILITY WAS NOT COMPROMISED.

The appellant Hughson proved the following facts, and they are undisputed: On January 15, 1930, his attorney wrote to the General Counsel of the Bureau of Internal Revenue, offering Mr. Hughson's check for $100.00 in full compromise of Mr. Hughson's liability upon the four bonds, and enclosing Mr. Hughson's affidavit in which he stated his reasons for thinking that the offered compromise should be accepted (Deft.'s Exhibits 3 and 4, Rec. pp. 92-96). It was also proved that the check, which was payable to the Com-

missioner, was endorsed by the Commmissioner to the Collector, without recourse, and on February 7, 1930, was cashed through the Hibernia Bank at San Francisco (Rec. p. 62). Mr. Hughson said that $100.00 had never been returned (Rec. p. 64), although he admitted the Collector tendered it (Rec. p. 64). This was all the defendant proved.

Quite aside from the evidence produced by the United States, the appellant failed to prove a legal compromise binding on the United States. This is because he has overlooked Section 3229 of the Revised Statutes (26 U. S. Code Ann., 158) which provides that the Commissioner may compromise any civil or criminal case arising under the internal revenue laws instead of commencing suit thereon "with the advice and consent of the Secretary of the Treasury"; and after suit has been commenced "with the advice and consent of said Secretary and the recommendation of the Attorney General". The statute further requires the opinion of the Solicitor of Internal Revenue to be filed with the Commissioner giving his reasons for the compromise.

The Supreme Court recently passed on the effect of the statute in

Botany Worsted Mills v. U. S., 278 U. S. 282, 73 L. Ed. 379.

In that case the taxpayer and auditors of the Bureau of Internal Revenue, after several conferences, made a compromise as to the points of difference. The tax-

payer filed an amended return following the terms of the compromise, an additional assessment was made by the Commissioner in accordance with the amended return, which the taxpayer paid. Thereafter the taxpayer filed claim for a refund seeking to recover on account of one particular item of the amended return which was unfavorable to the taxpayer. The question was whether the agreement of compromise was binding without the consent of the Secretary of the Treasury and without the filing of the opinion of the Solicitor of Internal Revenue in the Commissioner's Office. The Supreme Court held that the statute was exclusive and that the compromise agreement bound neither the taxpayer nor the United States.

The cases cited by defendant upon the legal effect of cashing a check are interesting and, no doubt, good law in other fields. They cannot prevail in the face of a statute prescribing the methods for compromising a claim against the United States which has been held to prescribe the exclusive method.

Furthermore, the evidence introduced by plaintiff on rebuttal shows that the appellant Hughson modified his first offer in compromise by a subsequent offer which expressly incorporated the provisions of Section 3229 of the Revised Statutes (see Deft.'s Ex. 2, Rec. p. 71). This came about through the Commissioner's return of the first offer and check and the Collector's request that Hughson execute an offer upon

Form 656 (Rec. pp. 65, 66) which he did, Mr. Hughson admitting in court his signature upon such form (Rec. p. 64). Then, and only then, did the Collector cash the check and place it in a special deposit awaiting action upon the proposed compromise (Rec. p. 66). Thus under the terms of the offer itself liability was not released until accepted by the Commissioner with the advice and consent of the Secretary of the Treasury. All that appellant proved, under the most favorable aspect of the facts, is that the government retained the money without notifying him of a rejection of his offer in compromise. This is not enough. See

U. S. v. Drielinger, 21 Fed. (2d) at p. 213.

The appellant argues that the affidavit (Deft's Ex. 3, Rec. p. 92) and the "Offer in Compromise" (Pltf's Ex. 2, Rec. p. 71) refer to separate and distinct liabilities and have nothing to do with each other. The argument is answered by a mere reading of the two documents, and by remembering that only one check was ever tendered to accomplish the compromise.

The trial court was so manifestly correct in ruling against appellant's defense of accord and satisfaction that we confess to surprise that the argument is renewed in this court.

IV.

THE RATE OF INTEREST WAS CORRECTLY FIXED IN THE JUDGMENT.

The complaint asked for interest at 12% per annum from May 15, 1925. The interest rate was fixed at 6% per annum upon the principal sum from May 15, 1925 to July 15, 1928, and thereafter at 12% per annum. Appellant complains of the allowance of the 12% rate from July 15, 1928.

The bonds in suit impose liability for the deficiency in tax "plus all penalties and interest". They were given on August 18, 1925, when the Revenue Act of 1924 was in effect. The taxes themselves were assessed by the Commissioner on May 14, 1925 (Rec. p. 69), and related to taxes for the years 1920, 1921, 1922 and 1923. Under the provisions of Section 280 of the Revenue Act of 1924, the collection and payment of those taxes ("including the provisions in case of delinquency after notice and demand") are governed by the Revenue Act of 1924.

The applicable provisions of the Revenue Act of 1924 are these:

Section 274 (g) which provides that where an extension of time is given, interest runs on the deficiency at 6% for the period of the extension, and thereafter at 1% per month.

Section 276 (a) (2) which reads to the same effect.

Section 279 (a) which relates particularly to jeopardy assessments made under section 274 (d). (This was such an assessment. See Rec. p. 14, Paragraph IV, Complaint, and Assessment p. 70). Under the provisions of Section 279 (a) the taxpayer may file a claim in abatement of such jeopardy assessments, coupled with a bond. If the claim in abatement is denied in whole or in part then

> "as a part of the tax, interest at the rate of 6% per annum upon the amount of the claim denied from the date of notice and demand from the collection under subdivision (d) of Section 274 to the date of the notice and demand under subdivision (b) of this section. If the amount included in the notice and demand from the collection under subdivision (b) of this section is not paid in full within 10 days after such notice and demand, then there shall be collected, as part of the tax, interest upon the unpaid amount at the rate of 1 per centum per month (in the case of estates of incompetent, deceased or insolvent persons at the rate of 6 per centum per month) from the date of such notice and demand until paid."

(The demand referred to in Section 279 (b) is the notice and demand made by the Collector after the claim in abatement has been rejected in whole or in part.)

The provisions of Section 274 (k), 276 (a) (2) (b) and 279 (j) of the Act of 1926 provide for similar

rates, as do Section 273 (f) and Section 294 (a) (b) of the Revenue Act of 1928.

Let us apply the provisions of the Act of 1924 to the facts. The deficiencies were assessed on May 14, 1925 (Rec. p. 69). The Collector made demand for payment on May 15, 1925 (Complaint Paragraph V, Rec. p. 4, admitted in Answer). A claim for abatement was filed on June 25, 1925 (Complaint Par. VI, Rec. p. 4), which was rejected for the full amount on December 9, 1927 (Complaint Par. VIII, Rec. p. 6; admitted in the Answer), and Hader was notified of its rejection on the same day. The Collector notified appellant Hughson of its rejection on July 14, 1928, and demanded payment on the same day (Complaint Par. VII, Rec. p. 16, admitted in the Answer).

Under the statute, Hader was liable for interest upon the deficiencies at *6%* from the date of the Collector's demand on May 15, 1925, to the time when he was notified of the rejection of his claim in abatement on December 9, 1927, and thereafter at 1% per month. As Hughson had assumed liability to pay Hader's deficiency as found by the Commissioner, with interest, it would seem arguable that he was liable for exactly the same amount of interest as Hader. All doubts, however, were resolved in Mr. Hughson's favor and the trial court computed the interest with the utmost leniency possible under the law. Appellant's liability for interest was made to run at 6% from the expira-

tion of ten days after Hader received notice of the deficiency, up to the time that notice was personally given him that Hader had failed to pay the taxes and payment was demanded from him, that is, from May 25, 1925, to July 14, 1928. Then, only, the rate was made to run at 1% per month.

We submit that the fixing of the rate of interest was scrupulously fair (of which the appellee makes no complaint) and that the trial court could not in conscience fix the rate otherwise. The case of

Maryland Casualty Co. v. U. S., 49 Fed. (2d) 556, (certiorari denied October 19, 1931),

was a case involving the liability of a surety for interest at 12% under the 1918 Revenue Statute which contained provisions closely resembling the provisions cited above. The case is authority for calculating the period during which interest runs against the surety more strictly than was done in the case at bar.

CONCLUSION.

We submit that this appeal is peculiarly without merit. There is not a point urged in appellant's brief which has not been passed upon by the courts many times, or upon which there can be any reasonable doubt.

We ask that the judgment be affirmed.

Respectfully submitted,

GEO. J. HATFIELD,
United States Attorney,

ESTHER B. PHILLIPS,
Assistant United States Attorney,
Attorneys for Appellee.

(APPENDIX FOLLOWS.

Appendix

(EX. A TO COMPLAINT.)

KNOW ALL MEN BY THESE PRESENTS:

That we, Carl A. Hader, of San Francisco, California, as principal, and W. L. Hughson, as surety, are held and firmly bound unto the United States of America in the sum of Three Thousand Six Hundred Twenty-four and Six One-hundredths ($3624.06) Dollars, lawful money of the United States, for the payment whereof we bind ourselves, our heirs, executors, administrators, successors and assigns jointly and severally, firmly by these presents:

WHEREAS, there is due from the above bounden principal, Carl A. Hader, for additional income tax for the year 1920 an aggregate of One Thousand Eight Hundred Twelve and Three One-hundredths ($1812.03) Dollars resulting from deficiency taxes which the Commissioner of Internal Revenue claims to be due because of fraud with intent to evade tax, but which taxpayer confidently asserts to be erroneous; and

WHEREAS, the exact payment of the deficiency in tax at this time by said Principal will result in undue hardship to him, and

WHEREAS, Section 274-G of the Revenue Act of 1924 provides that the Commissioner, with the approval of the Secretary may extend the time for the payment of such deficiency in tax or any part thereof for such period as may be considered necessary, not, however, in excess of eighteen months, and may require the tax-

payer to furnish a bond with sufficient sureties conditioned for the payment of the deficiency and interest thereon in accordance with the terms of the extension granted, and

WHEREAS, it appears that the amount of this bond is sufficient to cover the aggregate of the deficiency of taxes assessed against such principal for the year 1920, together with penalties and interest, and

WHEREAS, the principal herein has perfected an appeal from the determination of the Commissioner assessing the deficiency tax for the year 1920, and desires that the payment of the deficiency in tax be extended until the determination of said appeal, as a matter of fairness and justice.

NOW, THEREFORE, the condition of the foregoing obligation is such that if the principal shall, on or before the 10th day of June, 1926, pay such deficiency in tax for the year 1920 as may be found due by the Commissioner, plus all penalties and interest, in accordance with the terms of the extension granted, and shall otherwise well and truly perform and observe all of the conditions of law and the regulations, then this obligation to be void, otherwise to remain in full force and effect.

Witness our hands and seals this 18th day of August, 1925.

C. A. HADER,
Principal.
W. L. HUGHSON,
Surety.